

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Patricia Crawford-Cole

Court of Appeals No. L-07-1188

Appellant

Trial Court No. CI-2006-5976

v.

Lucas County Department of
Job & Family Services

DECISION AND JUDGMENT

Appellee

Decided: April 9, 2010

* * * * *

Terry J. Lodge, for appellant.

Julia R. Bates, Lucas County Prosecuting Attorney, John A. Borell and
Karlene D. Henderson, Assistant Prosecuting Attorneys, for appellee.

* * * * *

COSME, J.

{¶1} This matter is before the court on remand from the Supreme Court of Ohio. Appellant, Patricia Crawford-Cole ("Crawford-Cole"), filed a notice of administrative appeal with the Lucas County Common Pleas Court after her day-care provider certificate

was revoked by appellee, Lucas County Department of Job & Family Services ("LCDJFS"). The common pleas court concluded that it lacked subject matter jurisdiction to address Crawford-Cole's appeal because she failed to timely request a review from the highest authority of LCDJFS within the 10 day time period set forth by Ohio Adm.Code 5101:2-14-40.

{¶2} This court reversed the judgment of the common pleas court holding that "failure to exhaust administrative remedies is not a necessary prerequisite to an action, such as the one at hand, that challenges the constitutionality of an administrative rule." *Crawford-Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 174 Ohio App.3d 617, 2008-Ohio-359, ¶ 24, fn. 2. See *Derakhshan v. State Med. Bd. of Ohio*, 10th Dist. No. 07AP-261, 2007-Ohio-5802; *Jones v. Chagrin Falls* (1997), 77 Ohio St.3d 456, 462. This court reasoned that since Crawford-Cole should have been afforded 30 days to file her appeal with the agency, her remaining assignments of error were moot. The Supreme Court of Ohio, however, held that the 30-day period set forth by R.C. 119.07 applies only to state agencies and does not conflict with a county's action concerning certification of a type B family day-care home. The Supreme Court of Ohio instructed this court to consider Crawford-Cole's remaining assignments of error. Crawford-Cole's second and third assignments of error to this court ask whether the method of delivery of written notification set forth in the contract should be strictly enforced and whether the notice of revocation was adequate from a due process standpoint.

{¶3} However, since Crawford-Cole's second and third assignments of error were not addressed by the common pleas court, this matter must be remanded to the common pleas court for the limited consideration of the issues raised in "Appellant's Memorandum in Opposition to Appellee's 'Motion to Dismiss.'"

I. TERMS OF CONTRACT

{¶4} In her second assignment of error, Crawford-Cole asserts that:

{¶5} "It is error to not strictly enforce the notification terms contained in a governmental contract respecting the method of delivery of written notification of a certificate despite the availability of alternative methods of notification."

{¶6} Crawford-Cole asserts that according to the terms of the contract she had with LCDJFS, she has not yet been sent proper notice advising her of her Type B certificate revocation appeal rights. Paragraph 19 of the "Contract for Purchase of Publicly Funded Child Care Services" between LCDJFS and Crawford-Cole provides, "[i]f at any time, Agency has reasonable belief or actual knowledge of Provider's noncompliance with any Contract provision(s), or federal or state and or local law, regulation and/or rule * * * Agency shall immediately attempt to notify Provider of any such suspension and shall, within twenty-four (24) hours of a suspension, send written notice of the suspension to the Provider by regular U.S. Mail."

{¶7} Crawford-Cole complains that LCDJFS sent her notice of the alleged noncompliance with the contract by certified mail, rather than regular mail. Crawford-Cole asserts that "regular mail, not certified mail, was the method of delivery of formal

notices chosen by the Department when it chose, and imposed, the language of the contract."

{¶8} In its decision, the Lucas County Common Pleas Court declined to address LCDJFS's compliance with the contract. Since it was "without subject matter jurisdiction to hear this appeal," the common pleas court concluded that Crawford-Cole's "remaining arguments are moot." As such, the common pleas court did not consider whether LCDJFS complied with the terms of the contract. However, since it does have jurisdiction to hear Crawford-Cole's appeal, this assignment of error shall be remanded to the common pleas court for further consideration.

II. DUE PROCESS

{¶9} In her third assignment of error, Crawford-Cole asserts that:

{¶10} "It is error for the trial court to find review of the notice of revocation to be 'moot' and to refuse to scrutinize its adequacy from the standpoint of due process considerations."

{¶11} In her brief to the common pleas court opposing LCDJFS's motion to dismiss, Crawford-Cole asserted that the notice she was given "of her opportunity for hearing failed to contain required elements and is fatally defective." Again, given that the common pleas court did not address the issue, we must remand for further consideration.

{¶12} In *Chirila v. Ohio State Chiropractic Bd.* (2001), 145 Ohio App.3d 589, 594, the Tenth Appellate Court held that "the failure to timely request a hearing does not

preclude a court's consideration of whether an agency's procedures comply with due process." Observing that "[d]ue process rights guaranteed by the United States and Ohio Constitutions apply in administrative proceedings," the court in *Chirila* emphasized, "[t]he fundamental requirement of procedural due process is notice and hearing, that is, an opportunity to be heard." *Chirila*, 145 Ohio App.3d at 593, citing *LTV Steel Co. v. Indus. Comm.* (2000), 140 Ohio App.3d 680, 688. See *Korn v. Ohio State Med. Bd.* (1988), 61 Ohio App.3d 677, 684. See, also, *Mathews v. Eldridge* (1976), 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 33-34.

{¶13} Here, the July 24, 2006 letter provided to Crawford-Cole by LCDJFS indicated: "You have the right to appeal the revocation of your Certificate and request a County Appeal Review in accordance with OAC Section 5101:2-14-40, a copy of which is enclosed for your convenience." Because the trial court did not consider this assignment of error, absent from the record is a determination from the court of whether or not Crawford-Cole received a copy of Ohio Adm.Code 5101:2-14-40. Ohio Adm.Code 5101:2-14-40 states in relevant part: "(C) The request for a county appeal review shall be submitted in writing to the CDJFS no later than ten calendar days after the mailing date of the CDJFS notification that there will be an adverse action taken on the application for certification or the certification. The CDJFS shall not discourage, limit or interfere with an applicant's or provider's right to request a county appeal review."

{¶14} Crawford-Cole argues that the letter of July 24, 2006, did not comply with due process because it did not afford her "reasonable notice and opportunity to be heard." See *State ex rel. Great Lakes College v. Medical Bd.* (1972), 29 Ohio St.2d 198. She asserts that LCDJFS's letter of July 24, 2006, regarding "Revocation of Type B Home Provider Certificate ('Certificate')" did not comply with Ohio Adm.Code 5101:2-14-03 and 5101:2-14-06.

{¶15} Crawford-Cole asserts that the July 24, 2006 letter did not comply Ohio Adm.Code 5101:2-14-03(E)(2) and (4), which require: "(2) A statement of what must be done to correct the violation * * *" and "(4) A statement of the consequences if the provider fails to correct violations within the specified time frame." She also asserts that the July 24, 2006 letter did not comply with Ohio Adm.Code 5101:2-14-06(F)(4) which requires a statement that: "Notice that failure to receive a request for a county appeal review will result in immediate revocation of the certificate."

{¶16} Crawford-Cole also asserts that the failure to provide notice as specified in R.C. 119.07 invalidates the revocation of her day-care provider certificate. R.C. 119.06 provides that "[n]o adjudication order shall be valid unless an opportunity for a hearing is afforded in accordance with sections 119.01 to 119.13 of the Revised Code." Further, "the failure of an agency to provide notice in the manner specified in R.C. 119.07 invalidates any subsequent order issued by the agency." *Chirila v. Ohio State Chiropractic Bd.* (2001), 145 Ohio App.3d 589, 594. R.C. 119.07. Thus, to comport with due process requirements, R.C. Chapter 119 requires effective notice and a

meaningful opportunity to be heard. Id. citing McNeil, Due Process and the Ohio Administrative Procedure Act: The Central Panel Proposal (1997), 23 Ohio N.U.L.Rev. 783, 795-796.

{¶17} However, R.C. 119.07 requires that notice of an opportunity to request a hearing be provided by the agency and describes what information must be contained in the notice: "*Except when a statute prescribes a notice * * *.*" (Emphasis added.) In *Crawford-Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 121 Ohio St.3d 560, 2009-Ohio-1355, ¶ 31, the Supreme Court of Ohio held that "Had the General Assembly intended for the notice and hearing requirements set forth in R.C. 119.06 and 119.13 to apply to the revocation of a type B day-care certificate, it could have specified that in the statute, just as it did with respect to type A and other day-care facilities." Instead, Crawford-Cole is entitled to be given notice that comports with the applicable statutes and rules promulgated under R.C. 5104.011(G)(2)(g), which authorizes the agency to adopt rules that include procedures for "issuing, renewing, denying, refusing to renew, or *revoking certification.*" (Emphasis added.) Specifically, the common pleas court must consider whether the alleged failure to notify Crawford-Cole of her rights under Ohio Adm.Code 5101:2-14-40, portions of Ohio Adm.Code 5101:2-14-03 and 5101:2-14-06, violates Crawford-Cole's due process rights and renders her notice constitutionally defective.

{¶18} Because the Lucas County Common Pleas Court did not address Crawford-Cole's notice in light of the requirements of procedural due process, this assignment of error shall be remanded to the common pleas court for further consideration.

{¶19} Accordingly, this cause is remanded to the Lucas County Court of Common Pleas for the limited purpose of considering Crawford-Cole's second and third assignments of error that she has set forth in her appeal briefs (including the corresponding arguments raised in her appeal to the common pleas court). Appellee is ordered to pay costs of this appeal pursuant to App.R. 24.

CAUSE REMANDED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.